



United States Department of the Interior  
OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:  
SOL-2019-00270

September 12, 2019

Via email: 78220-98113789@requests.muckrock.com

MuckRock News  
DEPT MR 62283  
Attn: Jimmy Tobias  
411A Highland Ave  
Somerville, MA 02144-2516

Dear Mr. Tobias,

On August 30, 2019, the U.S. Department of the Interior, Office of the Solicitor received your Freedom of Information Act (FOIA) request. In your requests, you specifically ask for:

“...Copies of any records removed from final production for FOIA Request # SOL-2019-00048 during or after the awareness review as non-responsive.”

In processing your request, the Office of the Solicitor found 46 pages of responsive documents. Upon review 34 pages are being released in full; and 12 pages are being redacted in part. The pages being released in part were redacted pursuant to Exemption 5 deliberative process privilege; and Exemption 6 personal privacy interests. Please see the attached responsive documents.

Exemption 5 allows an agency to withhold inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

**Deliberative Process Privilege**

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decision-maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials redacted under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

### **Personnel and Medical Files**

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information redacted under Exemption 6 consists of personal information, employee personal information, and we have determined that the individuals to whom this information pertain have a substantial privacy interest in withholding it.

Lance Purvis, FOIA Officer, Office of the Solicitor, is responsible for making this decision. You may contact the FOIA Officer at [sol.foia@sol.doi.gov](mailto:sol.foia@sol.doi.gov) for further assistance and to discuss any aspect of your request.

This concludes the Office of the Solicitor's response to your request. The fee incurred in responding to your request is less than \$50 and is not being charged in accordance with 43 CFR 2.16(b)(2).

If you consider this response to be a denial of your request, you may appeal this response to the Department's FOIA Appeals Officer. If you choose to appeal, the FOIA Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

FOIA Appeals Officer  
U.S. Department of the Interior  
1849 C Street, N.W., MS 6556  
Washington, D.C. 20240  
Phone: 202-208-5339  
Fax: 202-208-6677  
Email: FOIA.Appeals@sol.doi.gov

You must include with your appeal copies of all correspondence between you and the Office of the Solicitor concerning your FOIA request, including a copy of your original FOIA request and your denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the Office of the Solicitor's response is in error. For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at 43 C.F.R. Part 2, Subpart H.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Purvis", with a stylized flourish at the end.

Lance Purvis  
Office of the Solicitor FOIA Officer